

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

| | | |
|-------------------------|---|---------------------|
| STEPHANIE BYRD, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 4:17 CV 277 CDP |
| |) | |
| BARNES-JEWISH HOSPITAL, |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM AND ORDER

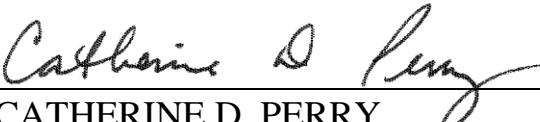
Plaintiff Stephanie Byrd filed a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC), claiming that Barnes-Jewish Hospital discriminated against her in her employment on account of her race and in retaliation for engaging in protected activity, in violation of Title VII of the Civil Rights Act of 1964. On July 8, 2016, the EEOC mailed to Byrd a notice of her right to sue on the charge. The notice advised Byrd that she could bring a civil action on her Title VII claim, but that any such action “must be filed within 90 days of [her] receipt” of the notice. Byrd filed this case on November 23, 2016. Because Byrd untimely filed this action, I will grant defendant’s motion to dismiss.

Mail is presumed to be received three days after its mailing. *Rich v. Bob Downes Chrysler Plymouth, Inc.*, 831 F. Supp. 733, 735 (E.D. Mo. 1993). Byrd has not responded to defendant’s motion to dismiss, so she has not rebutted this

presumption. I therefore presume that Byrd received the notice on July 11, 2016, meaning that she was required to file this action not later than October 9, 2016. Because she did not file the case until November 23, the action is untimely filed and will be dismissed. *See* 42 U.S.C. § 2000e-5(f)(1) (aggrieved party must bring Title VII action within ninety days of receiving notice); *Illig v. Union Elec. Co.*, 652 F.3d 971, 976 (8th Cir. 2011) (court may dismiss claim under Rule 12(b)(6) as barred by statute of limitations if face of complaint shows it to be time-barred); *Hill v. John Chezik Imports*, 869 F.2d 1122 (8th Cir. 1989) (dismissal of federal civil rights action appropriate if lawsuit not filed within ninety days of receipt of notice of right to sue).

Accordingly,

IT IS HEREBY ORDERED that defendant Barnes-Jewish Hospital's Motion to Dismiss [6] is **GRANTED**, and this action is dismissed with prejudice.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 14th day of March, 2017.